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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TAEK SANG YOON
CDC #P-67861,

Plaintiff,

vs.

A.B. GERVIN, et al.,

Defendants.

Civil No. 06-2107 BEN (NLS)

ORDER:

**(1) DISMISSING CIVIL ACTION
FOR FAILING TO PAY FILING FEE
OR MOVE TO PROCEED IN
FORMA PAUPERIS PURSUANT TO
28 U.S.C. § 1915(a); and**

**(2) DISMISSING CIVIL ACTION
AS DUPLICATIVE PURSUANT
TO 28 U.S.C. § 1915A(b)(1)**

Plaintiff, an inmate currently incarcerated at the California Rehabilitation Center in Norco, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

I. Failure to Pay Filing Fee or Request IFP Status

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

1 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,
 2 nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate
 3 dismissal pursuant to 28 U.S.C. § 1914(a).

4 **II. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

5 The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A obligates the Court to
 6 review complaints filed by all persons "incarcerated or detained in any facility who is accused
 7 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 8 conditions of parole, probation, pretrial release, or diversionary program," "as soon as
 9 practicable after docketing" and regardless of whether the prisoner prepays filing fees or moves
 10 to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss complaints,
 11 or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief
 12 may be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

13 Plaintiff's instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.
 14 § 1915A(b)(1) because it is duplicative of civil rights action he is already litigating. The
 15 Complaint filed by Plaintiff in *Sang v. Lopez, et al.*, S.D. Cal. Civil Case No. 06cv0459 W
 16 (BLM) contains identical claims against the same defendants named in this action. A court "may
 17 take notice of proceedings in other courts, both within and without the federal judicial system,
 18 if those proceedings have a direct relation to matters at issue." *United States ex rel. Robinson*
 19 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

20 A complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it "merely repeats
 21 pending or previously litigated claims." *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.
 22 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Thus,
 23 because a review of the Court's docket reveals that Plaintiff is already litigating the same claims
 24 presented in the instant action in *Sang v. Lopez, et al.*, S.D. Cal. Civil Case No. 06cv0459 W
 25 (BLM), the Court hereby **DISMISSES** Civil Case No. 06cv2107 BEN (NLS) pursuant to 28
 26 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

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1 **III. Conclusion and Order**

2 For the reasons set forth above, the Court hereby:

3 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
4 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

5 **IT IS FURTHER ORDERED** that:

6 (2) Plaintiff's Complaint in Civil Case No. 06cv2107 BEN (NLS) is **DISMISSED** as
7 frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

8 The Clerk shall close the file.

9 **IT IS SO ORDERED.**

10 **DATED:** 10/04/06


11 **HON. ROGER T. BENITEZ**
12 United States District Judge
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